

SERVED: November 12, 1992

NTSB Order No. EA-3726

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of October, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12217
v.)	
)	
LAWRENCE E. WOZNICK,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from an initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued orally at the conclusion of an evidentiary hearing held on May 28, 1992.¹ By that decision, the law judge affirmed an order suspending

¹An excerpt from the transcript containing the initial decision is attached.

respondent's airman medical certificate² pursuant to section 67.31 of the Federal Aviation Regulations ("FAR," 14 C.F.R.),³ for failure to furnish the Administrator with information he had previously requested.⁴

In connection with his appeal, respondent has pointed out that the information sought by the Administrator was not requested until more than 60 days after the medical certificate in question was issued and maintains that, as a result, the request was untimely under FAR section 67.25(b).⁵ He further

²While the Administrator suspended respondent's medical certificate on an emergency basis, respondent subsequently waived the rules pertaining to emergency proceedings.

³FAR § 67.31 reads as follows:

"§ 67.31 Medical records.

Whenever the Administrator finds that additional medical information or history is necessary to determine whether an applicant for or the holder of a medical certificate meets the medical standards for it, he requests that person to furnish that information or authorize any clinic, hospital, doctor, or other person to release to the Administrator any available information or records concerning that history. If the applicant, or holder, refuses to provide the requested medical information or history or to authorize the release so requested, the Administrator may suspend, modify, or revoke any medical certificate that he holds or may, in the case of an applicant, refuse to issue a medical certificate to him."

⁴In this case, the Administrator suspended respondent's medical certificate until such time as the information he requested is provided in full. While the Administrator initially specified several items in the order of suspension (herein the complaint) that he had sought but that had not been furnished by respondent, the law judge found at the conclusion of the hearing that the only requested material remaining to be provided were hospital/medical records relating to a penile prosthetic implant, which were referred to in ¶ 5e of the complaint. See Tr. 83.

⁵FAR § 67.25(b) provides:

"§ 67.25 Delegation of authority.

* * * * *

suggests that the individuals whose names appear on the request lacked the authority to act on behalf of the Administrator. For such reasons, respondent contends that the complaint should have been dismissed. Respondent also maintains that he has provided adequate information concerning his prosthesis by way of a letter from his surgeon and asserts that the Administrator has not demonstrated a need for any further data relating thereto. In addition, he questions the degree to which his having the prosthesis negatively impacts upon his ability to operate an aircraft.⁶

The Administrator has submitted a reply brief, in which he urges the Board to affirm the initial decision.

(..continued)

(b) The authority of the Administrator . . . to reconsider the action of an aviation medical examiner is delegated to the Chief, Aeromedical Certification Division, and each Regional Flight Surgeon. Where the applicant does not meet the standards of § 67.13(d)(1)(ii), (d)(2)(ii), or (f)(2), § 67.15(d)(1)(ii), (d)(2)(ii), or (f)(2), or § 67.17(d)(1)(ii), (d)(2)(ii), or (f)(2), any action taken under this paragraph other than by the Federal Air Surgeon is subject to reconsideration by the Federal Air Surgeon. A certificate issued by an aviation medical examiner is considered to be affirmed as issued unless an FAA official named in this paragraph on his own initiative reverses that issuance within 60 days after the date of issuance. However, if within 60 days after the date of issuance that official requests the certificate holder to submit additional medical information, he may on his own initiative reverse the issuance within 60 days after he receives the requested information."

⁶We also note that respondent has requested a hearing before the full Board. Respondent's Br. 10. Oral argument before the Board is provided for under our Rules of Practice in unusual circumstances "when the need therefore appears." 49 C.F.R. § 821.48(e). As we do not perceive that any issue of fact or law has been raised which was not adequately addressed in the record or briefs, we will deny respondent's hearing request.

Upon consideration of the briefs of the parties and the entire record, the Board has determined that the Administrator's order of suspension and the law judge's initial decision should be affirmed. Accordingly, we will deny respondent's appeal.

The essential facts of this case are not in dispute. Respondent applied for an airman medical certificate renewal on September 4, 1990. On his application, respondent noted that he had received a penile implant earlier that year. He also indicated that he had a record of traffic convictions (two arrests and/or convictions on alcohol-related charges within the last several years) and "other" convictions. Despite such information, an airman medical examiner granted respondent's application on that date. Thereafter, in a letter dated November 6, 1990, respondent was asked to furnish the FAA with the following information:

"[A]ll records associated with the offenses or associated with any care or treatment for alcohol abuse or related disorders. Also please provide a description of your alcohol use and of the circumstances surrounding the conviction(s). We also need hospital/medical records regarding the penal [sic] prosthesis, and an explanation regarding your history of 'other convictions.' We need the date(s), nature of offense(s), etc.

* * * * *

Please [also] provide a copy of your current driving record from your State Department of Motor Vehicles."

That letter was signed by Don Wood "for Audie W. Davis, M.D., Manager, Aeromedical Certification Division." Following several exchanges of correspondence pertaining to that request,

respondent's medical certificate was suspended for failure to fully comply therewith on October 21, 1991. While information fulfilling the other aspects of the request was subsequently submitted, the hospital/medical records sought have yet to be furnished. To date, the sole material provided by respondent concerning his prosthesis is a one-paragraph letter from the surgeon who performed the implant procedure, in which it is noted only that preoperative clinical studies indicated an organic disorder of unspecified origin, and that a psychological consultant had concurred in that diagnosis.

We will first address the procedural questions raised by respondent. With respect to his assertion that the request for information which led to the action against his airman medical certificate was not timely under FAR section 67.25(b), we must point out that, while that regulation sets forth procedures relating to reversals of airman medical certificates granted by aviation medical examiners, no such action was taken in this case. Here, respondent's medical certificate was suspended pursuant to FAR section 67.31, which does not impose any time limits upon the initiation of inquiries concerning a certificate holder's continuing compliance with the medical standards pertaining thereto. Thus, the fact that no information was requested within 60 days of the September 4, 1990 issuance of respondent's renewed medical certificate does not appear to provide a basis for vitiating the action taken by the

Administrator.⁷

The Board also finds no merit in respondent's argument that the request for information was invalid because the individuals whose names appear thereon lacked the authority to act on behalf of the Administrator. In this regard, we believe that FAR section 67.25(c) authorizes Dr. Davis, as manager of the FAA's Aeromedical Certification Division, to seek information from a medical certificate holder pursuant to FAR section 67.31 on behalf of the Administrator.⁸ Although the request at issue in this case was signed by another FAA employee, whose authority to act in this capacity is unclear, we note it was signed not on that employee's own behalf, but "for" Dr. Davis. Under such circumstances, we deem the request to have been made in Dr. Davis' name and under his authority and we, therefore, hold that

⁷Moreover, assuming arguendo that this case involved a certificate reversal and that FAR § 67.25(b) was, therefore, applicable, we note that § 67.25(b) does not impose a sanction upon the FAA for failing to comply with the 60-day rule. In view of this, it appears that, in addition to FAA inaction for more than 60 days, some equitable factor weighing in an airman's favor (e.g., unreasonable delay on the part of the FAA, reasonable action taken by the airman in reliance on the fact that the grant of his medical certificate had become "final") must be shown in order for that time limit to act as a bar to the reversal of a medical examiner's action granting a certificate.

⁸FAR § 67.25(c) provides:

"§ 67.25 Delegation of authority.

* * * * *

(c) The authority of the Administrator, under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), to re-examine any civil airman, to the extent necessary to determine an airman's qualification to continue to hold an airman medical certificate, is delegated to the Federal Air Surgeon and his authorized representatives within the FAA."

it was properly issued.⁹ In view of the above, the Board is of the opinion that the law judge did not err in failing to dismiss the Administrator's complaint.

Turning to respondent's substantive contentions concerning the propriety of the Administrator's request for the clinical records relating to his implant, we note that the appropriate inquiry is whether the Administrator has a reasonable basis for seeking such information.¹⁰ A review of the record in this case indicates that he does. In this regard, we note that the letter furnished by respondent's surgeon sheds little light on the precise cause(s) of the problem which led to that procedure. The Board believes that the physical, laboratory and psychological findings reported in the records sought may aid the Administrator in disclosing the nature of any particular disorder(s) suffered by respondent and, thus, in determining whether a disqualifying condition exists. Moreover, the evidentiary record, which reveals a prior history of arrests and/or convictions for disorderly conduct, assault and battery, setting false alarms and

⁹In this regard, see Administrator v. Interair Services, Inc., 3 NTSB 1715, 1718 (1979) (unauthorized associate regional counsel signing complaint over typewritten name of authorized regional counsel held to have signed on behalf of regional counsel; denial of motion to dismiss complaint affirmed); Administrator v. Smith, 3 NTSB 3942, 3943 (1981) (same result where signature of unauthorized staff attorney appeared above typed name of regional counsel in complaint).

¹⁰See, e.g., Administrator v. Pustelnik, 3 NTSB 946, 946-47 (1978); Administrator v. Brown, 4 NTSB 713, 713 (1982); Administrator v. Smith, 5 NTSB 1772, 1773 (1987).

intoxication, as well as alcohol-related traffic violations,¹¹ underscores the relevance of--and the Administrator's need for--such clinical data in connection with his evaluation of respondent's continued qualifications to hold a medical certificate. Consequently, we find no error in the law judge's affirmance of the Administrator's order of suspension.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision affirming the Administrator's order suspending respondent's medical certificate is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹¹See Tr. 60-65. In connection with the assault and battery offense, respondent was required to undergo a psychiatric evaluation. Id. 71.